Neutral Citation No: [2025] EWHC 289 (Admin)

Case No: AC-2024-LON-001547

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 11/02/2025

Before :

THE HONOURABLE MR JUSTICE SAINI

- -

Between :

DANA ASTRA IOOO **(a company registered in accordance with the laws of the Republic of Belarus)**	**Claimant**
- and -	
SECRETARY OF STATE FOR FOREIGN, COMMONWEALTH AND DEVELOPMENT AFFAIRS	**Defendant**

- -
- -

Maya Lester KC and **Malcolm Birdling** (instructed by **Fieldfisher LLP**) for the **Claimant**
Jason Pobjoy, **Rayan Fakhoury** and **Sean Butler** instructed by **Government Legal Department**) for the **Defendant**

Hearing dates: 28 January 2025

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JUDGMENT

This judgment was handed down remotely at 2pm on Tuesday 11 February 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

Mr Justice Saini:

This judgment is in 10 main parts as follows:

I. Overview

1. This is a case about economic sanctions imposed by His Majesty's Government ("HMG") on an entity registered in Belarus. That entity is the Claimant company, Dana Astra IOOO ("DANA"). It is the position of HMG, and not in dispute before me, that the Government of Belarus, under the control of President Alexander Lukashenko ("President Lukashenko"), has been responsible for serious human rights abuses, as well as electoral malpractice on a systematic basis.

2. President Lukashenko was elected as President for a 7th successive term earlier this year in an election regarded by the UK, the US and the EU as a sham. He has been Belarus' only President since its establishment as an independent state in 1994. Of particular relevance to this claim is the earlier presidential election of August 2020. The undisputed matters in the evidence before me are reflected in the most recent report by the UN Special Rapporteur on Belarus (9 May 2024). She concluded that the human rights situation in Belarus has continued to deteriorate, due to a deliberate policy of deterring dissidence launched in the aftermath of the contested August 2020 presidential elections. This includes retaliatory measures against real and perceived opponents, and handing out of arbitrary prison sentences. It is also not in issue before me that the Government of Belarus has supported and facilitated Russia's activities (including the 2022 invasion) to destabilise Ukraine and undermine or threaten its territorial integrity, sovereignty, and independence.

3. DANA is a major real estate development and construction company operating in Belarus. It was designated by the Defendant, the Secretary of State for Foreign, Commonwealth and Development Affairs ("the FCDO" and "the Secretary of State", respectively), as an entity subject to sanctions (in the form of asset freezing and related restrictions) pursuant to the Republic of Belarus (Sanctions) (EU Exit) Regulations 2019 ("the 2019 Regulations"). The 2019 Regulations were made under section 1 of the Sanctions and Anti-Money Laundering Act 2018 ("SAMLA"). The asset freeze operates only on any assets DANA may have within the UK or its Crown and Overseas Territories. The designation also restrains the provision of funds or economic resources within the UK to DANA.

4. Designation under the 2019 Regulations depends on the Secretary of State having reasonable grounds to suspect that a person is an "involved person", a concept which is defined in Regulation 6. In the particular circumstances of DANA's case, the Secretary of State's case is that he had reasonable grounds to suspect that DANA: (1) has been involved in the repression of civil society or democratic opposition in Belarus, or other actions, policies or activities which undermine democracy or the rule of law in Belarus, namely as a sponsor of the Belarusian National Olympic Committee ("the BNOC"); and (2) that DANA has been involved in obtaining a benefit from or supporting the Government of Belarus through carrying on business in a sector of strategic significance to the Government of Belarus, namely the Belarusian construction sector.

5. DANA challenges its designation under section 38 of SAMLA on two grounds. By way of high-level summary:

    (1) Ground 1: the designation constitutes a disproportionate interference with DANA's rights under Article 1, Protocol 1 ("A1P1") of the European Convention on Human Rights ("ECHR") and what are described as the "equivalent" or "cognate" rights protected by the common law; and

    (2) Ground 2: it was irrational on conventional public law principles for the Secretary of State to maintain the designation.

5. Maya Lester KC and Malcolm Birdling appeared for DANA. Jason Pobjoy and Rayan Fakhoury appeared at the hearing for the Secretary of State with Sean Butler assisting in written submissions. As I describe below, all Counsel who appeared at the hearing made oral submissions, helpfully dividing the issues between themselves. I am grateful for the excellent and concise oral and written arguments of Counsel.

6. At the forefront of DANA's case is the submission that far from being a beneficiary or supporter of the Belarusian Government, the opposite is true. It says that DANA is in fact subject to harsh sanctions and oppressive treatment by the Belarusian authorities because it is considered a foreign-owned company unfriendly to the economic interests of Belarus and the Lukashenko regime. DANA says that imposition of sanctions against it, even though it has no assets or property within the UK, is an exercise by the UK of "jurisdiction" for the purposes of Article 1 ECHR. It argues that its A1P1 ECHR rights have been interfered with, and there is a lack of a rational connection between the aims of the 2019 Regulations and DANA's designation as a means of pursuing those aims. It says that the designation was unlawful as disproportionate in ECHR terms, as well as irrational.

7. The Secretary of State's essential case is that the decision to designate DANA does not constitute the exercise of jurisdiction over it by the UK Government within the meaning of Article 1 ECHR. It is said that DANA does not hold any assets within the UK (the sole subject of the asset freeze) and is not known to have any financial assets linked to the UK, either through UK-based investments or commercial interests linked to UK-based companies. The Secretary of State says that even if jurisdiction under the ECHR was established, and A1P1 ECHR protected any alleged "possession" of DANA, the decision to designate DANA was and remains proportionate. As to Ground 2, it is argued that the designation is rational; and in fact the separate rationality challenge adds

nothing to the complaint about a lack of rational connection between the aims of the 2019 Regulations and DANA's designation as a means of pursuing those aims.

8. In terms of evidence, DANA relies on the witness statement of Vivien Davies (DANA's solicitor) and three statements from Vibor Mulic (Deputy General Manager of DANA). Mr Mulic gives evidence in particular about DANA's role in the Belarusian construction sector, and as the developer of the major mixed-used construction project 'Minsk World'. He also describes the effects of the sanctions imposed by the Belarus government on DANA and its historic sponsorship of the BNOC. Ms Lester KC took me in detail to parts of that evidence and some of the voluminous exhibits.

9. In defence of this claim, the Secretary of State relies on two witness statements from Calum Darling ("Mr Darling"), Deputy Director in the Sanctions Directorate of the FCDO. Mr Darling describes the basis for the designation, the review and maintenance of the designation and the FCDO's proportionality assessment and facts relied upon. As he describes, the designation and review process involved a substantial amount of documentation (most of which is in the supplementary bundle and I was taken to parts of it in the oral submissions). Mr Darling has also provided a further witness statement, in support of an application to redact names from documents. I deal with that application in Section X at the end of this judgment.

10. I have taken into account the statements relied upon and, where relevant, I will refer to this evidence using the shorthand, for example "Mulic 1" or "Darling 1", when referring to particular parts of the evidence.

II. Statutory Framework

11. DANA was subject to EU sanctions from 17 December 2020. Those measures took direct effect in the UK. I was shown a decision of the General Court (Fifth Chamber) dated 28 June 2023 in Case T-239/21 in which that court dismissed DANA's challenge to certain EU sanctions. It is not suggested that it is relevant to the issues which arise before me but I note from that judgment that DANA's role in the Minsk World project (a major feature of the case before me) was the principal basis for the EU action against DANA. Following the UK's departure from the EU, sanctions were given effect in domestic law by SAMLA, and regulations made pursuant to it.

12. Section 1(1) of SAMLA confers on the Secretary of State the power to "make sanctions regulations" for the purposes prescribed in section 1(2). Section 11(3)(a) of SAMLA requires that regulations must provide that an "involved person" means a person who "is or has been involved in any activity specified in the regulations" (my underlining). I mention this point at this stage because the primary legislation requires relevant regulations to include what I would call a backward-looking or historical conduct aspect.

13. The 2019 Regulations entered into force on 31 December 2020. Regulation 4, as amended, sets out the following relevant "purposes" of the 2019 Regulations:

> "**Purposes**

> The purposes of the regulations contained in this instrument that are made under section 1 of the Act are to encourage the Government of Belarus to—
>
> (1) respect democratic principles and institutions, the separation of powers and the rule of law in Belarus,
> (2) refrain from actions, policies or activities which repress civil society in Belarus,
> […]
> (d) comply with international human rights law and to respect human rights[.]"

14. There is no issue that the purposes outlined above satisfy one or more of the conditions set out in section 1(2) of SAMLA. In particular, the relevant Minister considered that carrying out these purposes would fall within SAMLA section 1(2)(f), in that it would promote compliance with international human rights law and respect for human rights law. There was a "*Report under s.2(4) of the Sanctions and Anti-Money Laundering Act 2018*" accompanying the 2019 Regulations, from the Minister of State for Europe and the Americas, on behalf of the Secretary of State. Insofar as material, that report stated:

> *"*The Government of Belarus continues to violate its international human rights obligations and the UK continues to lead international efforts to encourage Belarus to improve its human rights record and seek to encourage the Belarusian Government to change. We do this by putting pressure on the Belarusian government to improve the human rights situation in Belarus, including by imposing sanctions on human rights violators working or who have worked for the state."

15. The 2019 Regulations make provision for imposition of sanctions. Regulation 5 confers a power on the Secretary of State to designate persons, including bodies corporate, by name for the purposes of imposing particular sanctions measures, including financial sanctions (under regulations 11 to 15). A "person" is defined by section 9(5) of SAMLA to include (in addition to an individual and a body of persons corporate or unincorporate) any organisation and any association or combination of persons. So far as material, regulations 5A(3) and (4) together provide that the Secretary of State may designate a person by name only if he has "reasonable grounds to suspect that that person is an involved person." At the date of the initial designation (31 December 2020), the designation criteria were set out in regulation 6 of the 2019 Regulations. The 2019 Regulations were amended on 5 July 2022, so as to reflect the changes introduced by way of the Economic Crime (Transparency and Enforcement) Act 2022 ("ECA"): Republic of Belarus (Sanctions) (EU Exit) (Amendment) Regulations 2022 ("2022 Amendment Regulations").

16. Regulation 5A of the 2019 Regulations now makes clear that the only prescribed condition for designation is that "the Minister has reasonable grounds to suspect that the person is an involved person". Insofar as relevant, the meaning of "involved person" is defined in regulation 6(2)(a) as "a person who […] is or has been involved in" any of the following:

> "(iii) the repression of civil society or democratic opposition in Belarus [; or]

(vii) obtaining a benefit from or supporting the Government of Belarus through carrying on a relevant business activity[.]"

17. Regulation 6(3) provides that a reference to "being involved in an activity set out in paragraphs (2)(a)(i) to (vi) above includes being so involved in whatever way and wherever any actions constituting the involvement take place". Regulation 6(3A)(c) provides that "being involved in obtaining a benefit from or supporting the Government of Belarus" includes, in particular, "(c) carrying on business in a sector of strategic significance to the Government of Belarus". One such sector is the Belarusian construction sector" (regulation 6(4)(b)).

18. A person who has been designated under a power contained in regulations made under section 1 of SAMLA has a right to request that the designation be varied or revoked under section 23 of SAMLA. Section 38(1) of SAMLA provides a right to a court review of the decision made following a request that the designation be varied or revoked under section 23 of SAMLA. In determining such an application, the Court is to apply the principles applicable on an application for judicial review (section 38(4) of SAMLA), and the Court may make any order or give any relief as it could in judicial review proceedings, subject to sections 39(1)-(4) of SAMLA. DANA relies upon Section 7(1) of the Human Rights Act 1998 ("the HRA 1998"). This provides, insofar as material, that a person who claims that a public authority has acted (or proposes to act) in a way which is made unlawful by section 6(1) may rely on the Convention rights concerned in any legal proceedings, provided he is (or would be) a "victim" of the unlawful acts.

III. The Facts and the Designation Process

DANA's construction business: Minsk World

19. DANA is registered, and operates in, Belarus. Its parent company is registered in Cyprus although that may have been changed to a UAE holding company more recently. DANA is one of the largest real estate developers in Belarus and has operated within the Belarusian construction sector since 2006. DANA's major undertaking in the construction field is the Minsk World Project. This is a major mixed-use project in the Belarus capital to which DANA won rights of development following a tendering process, and decree, issued by President Lukashenko in September 2014. The Minsk World site spans over 3 million square metres and the development cost has been estimated at USD 3.5 billion. It is a multifunctional centre intended to house administrative, commercial, socio-cultural, sports and residential infrastructure. It is being developed by DANA on plots of land owned by the Belarusian State that are located in the centre of the capital Minsk. The basis of the project is what in the UK we would call a *public-private* partnership between DANA and the Belarusian Government. The Minsk World centre as part of the project is to become the first international financial centre in Belarus. The project overall is of particular socio-economic importance to Belarus given that hundreds of Belarusian contractors are involved in its construction, that almost all the construction equipment and materials are produced domestically, and that the construction of the centre means guaranteed jobs for tens of thousands of specialist workers across the country. It can fairly be described on the material before me as a flagship development for the state. The

development project is ongoing. I will refer to DANA's involvement in this construction project as the "Minsk World Matter" below, by way of shorthand.

The Belarusian National Olympic Committee (BNOC)

20. On 28 June 2019, DANA signed a four-year sponsorship agreement with the BNOC. DANA says that this was a commercially negotiated contract and DANA has paid US$2 million to the BNOC over the term. Mr Mulic describes in his evidence the circumstances and background to the sponsorship arrangement as part of the commercial promotion of DANA. Of relevance to the present case is the fact that the International Olympic Committee ("the IOC") adopted measures against the BNOC for not protecting athletes from reprisals against them for protesting against the rigged Belarus elections of 9 August 2020 (and subsequent violent suppression of peaceful protests). Mr Mulic says that DANA sought to terminate the agreement in order to distance itself from the actions of the BNOC, which it considered to be at risk of tarnishing DANA's name, and the company sought to do so as soon as reasonably possible following the IOC's findings and adoption of provisional measures against the BNOC on 7 December 2020. The sponsorship agreement was terminated on 6 January 2021. I will refer to DANA's sponsorship of the BNOC as "the Olympic Sponsorship" by way of shorthand below.

Sanctions imposed in Belarus

21. Since 1 July 2022, DANA has been the subject of sanctions in Belarus imposed by the Lukashenko regime. It has been targeted for sanctioning on the basis that as a foreign company it is considered to have taken "unfriendly actions" against the regime. It appears to be regarded as a "foreign" company because of its Cypriot ultimate ownership. These sanctions have included measures: (a) preventing DANA from reorganising or from transferring or disposing of shares without the prior permission of the regime itself and the payment of a fee; (b) preventing DANA from selling property to legal entities without the prior permission of the regime and a payment of a fee equivalent to 25% of the market value of the property; and (c) subjecting DANA to the payment of a 25% tax in the event it wishes to distribute income to its shareholders. On the evidence before me, and on the basis of Ms Lester KC's forceful submissions, I am satisfied that the consequences of the Belarusian sanctions for DANA have been severe. In short, DANA faces real challenges in operating effectively in Belarus, it is unable to divest itself from the project, and it has been threatened with, and recently subject to, expropriation. The Secretary of State does not take issue with these matters.

Sanctions imposed by the UK

22. DANA was first designated by the Secretary of State on 31 December 2020. That had the effect of imposing an asset "freeze" on any assets of DANA in the UK and its Crown and Dependent Territories. The Statement of Reasons in its original Sanctions Designation Form ("SDF") provided as follows:

> "Dana Holdings belongs to the Karic brothers (Dragomir and Bogoljub), who are closely associated with Lukashenko and his family, and have benefitted significantly from that relationship. Dana Holdings is the only non-state owned general sponsor of the Belarusian National Olympic Committee (NOC). The IOC has adopted measures against the NOC for not appropriately protecting athletes from reprisals against them for protesting the 9 August elections and subsequent

violent suppression of peaceful protests. Dana Holdings publicly supported Lukashenko in the face of strikes and protests".

23. DANA's designation was varied on 17 March 2022 following a triennial review process. A March 2022 SDF and accompanying lengthy Sanctions Designation Evidence Form Pack (SDFE) were created. DANA requested revocation of its designation on 16 February 2023 by way of Ministerial review pursuant to section 23 of SAMLA. It submitted materials in support (43 annexes). An administrative review was initiated, pursuant to which FCDO officials reviewed each of the annexes provided by DANA in support of its request for the revocation. A review was also conducted of the reasoning and evidence set out in the March 2022 SDF and accompanying SDFE, and further open-source research was carried out to consider if there was any further evidence to support or undermine the decision to designate DANA. This is described in some detail by Mr Darling and it is not necessary for me to set this out in detail, save to note that this appears to have been a rigorous process. It involved a review of many thousands of pages of material submitted by DANA, and conscientious consideration of the designation on a fresh basis. Although Ms Lester KC disputed the outcome of the review, it was rightly not submitted that there was any procedural unfairness or failure by those acting for the Secretary of State to undertake an open-minded review.

24. Officials produced an Administrative Review Form summarising the details of the application for a review, the grounds on which DANA had requested revocation, the FCDO's analysis of those grounds, and officials' recommendations as to the appropriate response. The Statement of Reasons, SDF, and SDFE in relation to DANA were also amended to add a second ground of designation based on DANA carrying on business in the Belarusian construction sector (the Minsk World Matter). I will return to this below. Officials held a case closure meeting on 16 August 2023 to discuss the administrative review and its conclusions, and agreed the recommendation to Ministers that the designation should be varied with an updated Statement of Reasons. The minutes of that meeting are in the material before me. A submission reflecting the recommendation was then provided to the relevant Minister on 21 August 2023 and endorsed the following day.

25. The final decision to vary the designation was made on 31 August 2023 and the UK Sanctions List was updated accordingly. The amended Statement of Reasons provides as follows:

> "Dana Holdings A.K.A Dana Astra is an involved person under the Republic of Belarus (Sanctions) (EU Exit) Regulations 2019 because:
>
> (1) [it] has been involved in the repression of civil society or democratic opposition in Belarus, or other actions, policies or activities which undermine democracy or the rule of law in Belarus, namely as a sponsor of the Belarusian National Olympic Committee, and
>
> (2) [it] is or has been involved in obtaining a benefit from or supporting the Government of Belarus through carrying on business in a sector of strategic significance to the Government of Belarus, namely the Belarusian construction sector."

26. In more detail. the Administrative Review Form and Updated SDF explained the two grounds of designation as follows (relying on what I have called the Olympic Sponsorship and the Minsk World Matter above):
    (1) The first ground of designation arises from DANA's sponsorship of the BNOC between June 2019 and January 2021. President Lukashenko was president of the BNOC throughout that period. The BNOC engaged in acts of suppression of protest by Belarusian athletes who protested against the outcome of the flawed August 2020 elections in Belarus. DANA continued to sponsor the BNOC during that period of suppression, and was therefore involved in the repression of civil society or democratic opposition in Belarus or in other actions, policies or activities which undermine democracy or the rule of law in Belarus.
    (2) The second ground of designation reflects the fact that DANA is one of the largest real estate developers in Belarus (having operated in that sector since 2006) and was granted the development rights for a major mixed-use construction project known as "Minsk World" in September 2014. DANA is therefore involved in obtaining a benefit from or supporting the Government of Belarus through carrying on business in a sector of strategic significance. President Lukashenko has publicly commented on the importance of the project for the economic interests of Belarus, and expressed his Government's commitment to ensuring that the project is completed, through the use of "*additional reserves if necessary*".

27. At this stage it is convenient to set out the Secretary of State's wider rationale for the designation. In the Secretary of State's evidence, Mr Darling relies upon six matters in support of the case that the asset freeze is rationally connected to a legitimate objective and achieving the purposes as set out in Regulation 4. Given that these matters are the subject of Ms Lester KC's detailed critique in support of Ground 1 (and are essentially the reasons for exercising the discretion to impose sanctions (challenged under Ground 2), I will set out the six matters in full:

    (1) First, DANA's designation will disincentivise it (and other similarly-situated persons) from conduct enabling or facilitating the repression of civil society or democratic opposition in Belarus, for example by engaging in corporate sponsorships of the BNOC which are involved in the repression of Belarusian civil society.
    (2) Second, and relatedly, DANA's designation will incentivise any persons who are currently involved in enabling or facilitating the repression of civil society or democratic opposition in Belarus immediately to end their involvement in such activities.
    (3) Third, DANA's designation will disincentivise it (and other similarly-situated persons) from obtaining any further benefit from or supporting the Government of Belarus through carrying on business in a sector of strategic significance to the Government of Belarus. FCDO considers that through DANA's prominence in the Belarusian construction sector it is reasonable to infer that its association with Minsk World serves to legitimise the carrying on of business in the Belarusian construction sector. Further, the likelihood that the designation will achieve the incentive effects set out above is increased by DANA's prominent status and connections, the nature of its involvement in the construction sector, and the

particular importance of that sector to the Belarusian economy and the Government of Belarus. DANA supported and legitimised the Belarusian construction sector through its high-profile involvement in a flagship project of importance to the Government of Belarus. DANA's business was conferred benefits through decrees by President Lukashenko, including gifts of plots of state land in Minsk; generous tax breaks; the use of state resources for infrastructure; and other preferential terms. In DANA's own Forensic Report submitted in support of the review, it is stated that: "maintaining close access to the president and his inner circle is key to the entire life cycle of a construction project" and "connections to key decision-makers … are also vital for access to state financing and subsidies, and other privileges". DANA's designation will disincentivise such behaviour in future (whether by DANA or by other similarly-situated persons).

(4) Fourth, and relatedly, DANA's designation will incentivise any persons who are currently obtaining a benefit from or supporting the Government of Belarus through carrying on business in a sector of strategic significance to the Government of Belarus immediately to end their involvement in such activities, for example by divesting from such businesses or terminating any existing commercial relationships with entities operating in sectors of strategic significance to the Government of Belarus.

(5) Fifth, DANA's designation sends a signal to DANA and others in its position (i.e. persons who have enabled or facilitated the repression of Belarusian civil society or who have obtained a benefit from or supported the Government of Belarus) that there are negative consequences to having implicitly legitimised the Government of Belarus's actions in that way. It sends a strong signal of the UK's position towards the Belarusian authorities, and our view that DANA has been complicit through its actions in the repression of civil society or democratic opposition and other actions, policies or activities which undermine democracy or the rule of law in Belarus. This may deter individuals and companies from engaging with or supporting DANA, providing it with financial services, making funds or economic resources available to it, or repressing civil society or undermining democracy (or similar activity) themselves. It may also lead to criticism of DANA and their actions, which could incentivise DANA towards a positive change in their behaviour and could also act as a deterrent to others. DANA's designation means that to the extent that they would wish to deal with funds or economic resources in the UK, this would be limited by their designation, and these constraints may provide an incentive to change their behaviour. Through these measures, the UK will be able to hold DANA to account for their support for the regime's repression of civil society/undermining of democracy, taking place in relation to the flawed elections of August 2020 and violent suppression of protests that followed.

(6) Sixth, DANA's designation may incentivise it, and other similarly-situated persons, to speak out against the unacceptable behaviour of the Belarusian regime, including in relation to its complicity in the invasion of Ukraine.

28. I note that, in substantial part, the Secretary of State's rationale is focussed on historic actions by DANA, and the desire to disincentivise such further actions by both DANA and other entities. Further, a major aspect of the Secretary of State's purpose in the designation is to send "signals" both to DANA and other entities considered to have supported the Lukashenko regime, with the intention of effecting changes in future behaviour.

IV. Is DANA an "involved person"?

29. Regulation 5A of the 2019 Regulations provides that the condition for designation is that "the Minister has reasonable grounds to suspect that the person is an involved person". Until the oral hearing, neither I (nor indeed Counsel for the Secretary of State) had appreciated that DANA was contesting as rational and lawful the Secretary of State's decision that the Olympic Sponsorship and the Minsk World Matter made it an "involved person". That issue did not appear to me to be raised by the pleadings. So, in the Claim Form, Ground 2 was pleaded as follows: "The Secretary of State could not, on the basis of the material before them [SIC] at the time of the review decision, rationally have concluded that the matters which led to the Secretary of State concluding that the Claimant fell within the definition of an "involved person" disclosed sufficient grounds to justify maintaining its designation". It is hard to read this as anything other than a complaint about the exercise of the discretion to maintain the designation of a person who it was accepted was "an involved person". It is plainly not a complaint about the prior necessary finding that there are reasonable grounds to suspect that DANA was an "involved person". The Secretary of State's Counsel, in their pleaded response to the claim, understood the position of DANA in the same way as me. So, at [45] of that pleading, the Secretary of State noted in terms that "…no challenge is made by the Claimant to the Secretary of State's conclusion there are reasonable grounds to suspect that it is an "involved person" within the meaning of regulation 6 of the 2019 Regulations. That is highly relevant to any assessment of the public interest in DANA's designation and the balance to be struck between the interference with its Convention rights and the legitimate aims pursued by the designation". DANA did not suggest that this understanding was incorrect when it received the response, and I did not appreciate that a challenge was in fact being made until Ms Lester KC's oral submissions when the hearing began.

30. At the hearing, Ms Lester KC argued that this was in issue and that her case was that it was irrational on conventional public law principles for the Secretary of State to have decided her client was an "involved person". The scope of her challenge was however confined to the Olympic Sponsorship. She accepted that the Minsk World Matter "just about" made DANA an "involved person". Given this concession this point does not ultimately assist DANA.

31. On behalf of the Secretary of State, Mr Pobjoy was content to address the rationality of the Olympic Sponsorship matter, but indicated that his client may well have served further evidence had it been appreciated that this point was being taken. He did not argue that an amendment was required to the pleading and no adjournment was sought. In those circumstances, I heard submissions from Ms Lester KC and Mr Fakhoury responded on this point for the Secretary of State in oral submissions. I am satisfied that the Secretary of State's decision that the Olympic Sponsorship gave him "reasonable grounds" to suspect DANA was an "involved person" was rational for the reasons I summarise below. Unlike the proportionality challenge, this challenge has to be assessed on the basis of the material at the time the Secretary of State made the designation decision.

32. What was required for designation under regulation 5 was that the Minister had "reasonable grounds to suspect" that a person is presently, or has at any time in the past been involved in whatever way in the repression of civil society or democratic

opposition in Belarus, wherever the relevant acts took place. The standard of "*reasonable grounds to suspect"* has been interpreted by the courts in the analogous context of legislative provisions relating to control orders. In Secretary of State for the Home Department v MB [2007] QB 415 ("MB"), Lord Phillips held at [67]:

> "The issue that has to be scrutinised by the court is whether there are reasonable grounds for suspicion. That exercise may involve considering a matrix of alleged facts, some of which are clear beyond reasonable doubt, some of which can be established on the balance of probability and some of which are based on no more than circumstances giving rise to suspicion. The court has to consider whether this matrix amounts to reasonable grounds for suspicion and this exercise differs from that of deciding whether a fact has been established according to a specified standard of proof" (emphasis added).

33. In Synesis v Secretary of State for Foreign, Commonwealth and Development Affairs [2024] KB 81 ("Synesis"), Jay J explained at [75]-[78] that the "matrix of alleged facts" approach set out in MB has "survived the test of time" and applied by analogy in the context of sanctions designations. There was no suggestion that Jay J's approach was incorrect and I respectfully adopt it. In dismissing the application which alleged irrationality, Jay J held that there was a distinction between the statutory threshold ("reasonable grounds to suspect") and the standard of review applied by the Court. As regards the statutory threshold, he explained that (1) the decision-maker is "not limited to evidence that would be admitted to a court of law," and the decision-maker is entitled to take "hearsay," "allegations" and "intelligence" into account; and (2) the "'reasonable grounds to suspect' criterion does not import any standard of proof. To "suspect" a person does not require a finding of fact. It entails the assessment or evaluation of the available information and material, the drawing of inferences from all the circumstances, and then the acquisition in good faith of a state of mind once that exercise has been completed" at [73]. Jay J also observed that as regards the standard of review, the Court could not "stand in the shoes of the Defendant" when conducting this review exercise under section 38 of SAMLA. Instead, "the Court's role is to examine whether the Defendant's decision was either based on no evidence or was irrational": [81]. In this regard, the Defendant's "margin of appreciation" is "broad," especially in a context that involves "the making of expert judgments in an area of government policy": [82].

34. The Secretary of State says the relevant support and/or benefit consisted of DANA's sponsorship of the BNOC between 28 June 2019 and 6 January 2021. Applying the approach in Synesis, in my judgment the Secretary of State was rationally entitled to conclude to the level of reasonable suspicion and as a matter of inference that, as the sole non-state-owned company sponsoring the BNOC, DANA supported the Government of Belarus at the time it undertook reprisals against Belarusian athletes protesting the 9 August 2020 elections.

35. President Lukashenko was the BNOC President during the period of DANA's sponsorship. The evidence is that professional and Olympic sport is central to the Belarusian regime in projecting an image of national identity. So, in a speech given in 2018, President Lukashenko described sport as "a huge layer of our ideological work"

and "one of the state priorities". He added that "[t]hanks to the victories of our athletes the images of our state is shaped and patriotism is nurtured". As to the measures taken against athletes, the evidential material before the Secretary of State was in summary as follows. A number of Belarusian athletes protested against the outcome of the rigged August 2020 elections. Between August and September 2020, more than 500 sports representatives signed an open appeal to the Belarusian government asking it to admit that the results of the presidential election in 2020 were invalid, and with a demand that it cease violence and free all political prisoners. In October 2020, about 800 Belarusian athletes issued a statement against violence in Belarus. The Belarusian Sport Solidarity Foundation ("BSSF") was founded in August 2020 to support athletes who suffer reprisals because of their political views. According to BSSF, as reported by Amnesty International, 95 athletes were detained for taking part in peaceful protests. 7 of them were charged with political offences for their peaceful opposition to the government, and 124 have suffered other forms of repression including 35 athletes who were dropped from the national team. In October 2020, it was announced that the IOC was investigating claims from Belarusian athletes who said they were facing such reprisals for protesting the disputed election, including arrests, threats and dismissals from jobs.

36. On 7 December 2020, the IOC announced the imposition of provisional measures on the BNOC, having reached the conclusion that the BNOC leadership had not appropriately protected the Belarusian athletes from political discrimination within the BNOC or the sports movement. Those measures included the exclusion of President Lukashenko in his capacity as BNOC President and Viktor Lukashenko in his capacity as BNOC's First Vice-President. They were the figureheads for that organisation.

37. DANA's sponsorship agreement remained in place during these repressive actions against the athletes, and even after the IOC's announcement of its investigation into the Government of Belarus' repressive conduct in October 2020, its findings and imposition of provisional measures on 7 December 2020. The agreement was terminated in January 2021 but that does not undermine the fact that DANA gave public facing apparent support to BNOC, through sponsorship of the state and the BNOC (which carried out or oversaw the abuses I have set out above). The apparent distancing by DANA of itself from the BNOC was not matter which the Secretary of State was obliged to accept removed the support by sponsorship of that organisation at the time of these abuses.

38. It was plainly rational for the Secretary of State to conclude in these circumstances that the Olympic Sponsorship made DANA an "involved person" on the "reasonable grounds to suspect" test, and so liable to the application of designation and sanctions.

V. <u>Ground 1: Article 1 ECHR and A1P1 ECHR submissions</u>

39. I will address the detailed submissions made by Counsel in more detail in Section VI of this judgment when setting out my analysis, but will provide a broad overview at this stage to put the issues in context.

40. Mr Birdling addressed jurisdiction on behalf of DANA. He argued that the decision to maintain its designation amounts to a form of exceptional exercise of jurisdiction for the purposes of Article 1 ECHR even though it has no property within the UK on which the freeze bites. Mr Birdling submitted that where a contracting party to the ECHR

implements sanctions, those sanctions are an exercise of its jurisdiction for the purposes of Article 1 even if the designated person or entity is physically located outside that country. He also argued that the designation and the proposed asset freeze affect DANA's rights to peaceful enjoyment of its "possessions" under A1P1 and the common law within the territory of the UK. In this regard he submitted that designation and the proposed asset freeze interfere with DANA's rights because they deprive it of the ability to conduct business in the UK now and in the future (including instructing and making payment to its legal representatives in the UK); and also deprive DANA of the "goodwill" of its business both in the UK and abroad. He argued that the goodwill of a business is a "possession" for the purposes of A1P1, relying on Breyer Group plc v Department of Energy and Climate Change [2015] 1 WLR 4559 ("Breyer") at [43]. This part of the case, as to the "possessions" said to be in issue, developed a number of times between skeletons and oral submissions. I return to this issue in more detail below.

41. As to proportionality, and by reference to the well-known test in Bank Mellat v Her Majesty's Treasury (No. 2) [2014] AC 700 ("Bank Mellat"), 771, Ms Lester KC, who addressed this issue in oral submissions, argued that none of the purported rationales relied on by the FCDO or the factors relied on by the Secretary of State is sufficient either alone or cumulatively to support the Secretary of State's contention that there was a rational connection between DANA's designation and the purposes of the 2019 Regulations. Ms Lester KC sought to support this overarching point by taking me through each purported rationale/factor in some detail. She also took me to parts of the evidence concerning the difficulties encountered by DANA and its employees in Belarus through adverse governmental actions. Ms Lester KC argued that even if the Secretary of State could demonstrate that the measures are rationally connected to the objective of the 2019 Regulations, he has still failed to discharge this burden of establishing that the severe consequences of designation suffered by DANA are outweighed by the benefits which are expected to follow from its designation. In this regard, she forcefully submitted that the likely benefit of DANA's designation is non-existent and to the extent that the Secretary of State's expectation of public benefits is entitled to be accorded any weight in the balancing exercise, these would have to be scrutinised by comparison with the hardships which follow from designation.

42. Ms Lester KC also argued that the decision to designate DANA was arbitrary (through the lack of a policy guiding the exercise of the wide discretion and the difference of treatment as between her client and other entities). She further submitted that the designation amounted to "retrospective penalisation".

43. Mr Pobjoy's core response to Ground 1 was that the decision to designate DANA does not constitute the exercise of "jurisdiction" over it by the UK Government within the meaning of Article 1 ECHR. He argued that the concept of jurisdiction under the ECHR is essentially territorial, subject to certain narrowly defined exceptions, none of which apply to the present case. In particular, Mr Pobjoy submitted that the mere fact that a person's interests are engaged or adversely affected by an administrative decision taken in an ECHR State is insufficient to bring that person within the scope of Article 1. He underlined that DANA is not domiciled in the UK, nor does it have any property or other assets within the jurisdiction. He takes issue with there being evidence of goodwill in the UK and argued that the Breyer case supports his position.

44. In the alternative, Mr Pobjoy argued that even if A1P1 did apply to the claimed bundle of possessions relied on by DANA, the decision to designate DANA was and remains proportionate. In this regard, he underlined that DANA does not bring any challenge to the statutory framework governing designation under the 2019 Regulations. Nor, he submitted, does it allege that the Secretary of State was wrong to conclude that it is or was an "*involved person"* within the meaning of the Regulations (factually this is right save for the rationality point I have identified above concerning the Olympic Sponsorship). Mr Pobjoy said that this is an important starting point for any assessment of the proportionality of the designation: it means that DANA falls within the "class" of persons in respect of whom Parliament has determined that there is (or may be) a public interest in their designation. He further argued that DANA's designation is rationally connected to the purposes of the 2019 Regulations. He submitted that in light of its sponsorship of the BNOC and its prominent position in the Belarusian construction sector (including involvement in the high-profile Minsk World Project, the importance of which has been emphasised by President Lukashenko himself), DANA's designation may deter both DANA and other similarly-situated persons from engaging in similar activities in the future. He also said that DANA's designation likewise "signals" the UK's disapproval of DANA's participation in those activities and the corresponding implicit legitimisation of the conduct of the Belarusian Government. Strong reliance was placed on what he termed "deterrent and signalling" functions which he argued are rationally connected to the legitimate objectives of the 2019 Regulations.

45. Finally, Mr Pobjoy argues that DANA's evidence as to the hardship that it is allegedly now suffering relates only to the impact of legislative measures imposed by the Government of Belarus in relation to foreign-owned businesses; and any corresponding alleged hardships are not attributable to the UK designation. Mr Fakhoury responded on the claims of arbitrariness, retrospectivity and rationality. I will summarise his essential points below.

V. Ground 1: analysis and conclusions

Article 1 ECHR

46. I was referred to a large number of cases, but I consider the principles to be well-established. Article 1 ECHR provides that the High Contracting Parties "shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention" (my emphasis). The exercise of jurisdiction by the state is a condition *sine qua non* in order for that state to be held responsible for acts or omissions attributable to it and which give rise to an allegation of the infringement of rights and freedoms specified in the ECHR. In the arguments, the issues of jurisdiction and claimed infringement of a particular ECHR right (here, A1P1 ECHR) were not always kept separate. As explained by the Strasbourg Court on a number of occasions, the question of whether a state is jurisdictionally liable under the ECHR for the acts or omissions at the origin of the applicants' complaints is a separate issue which belongs to what it traditionally calls "the merits" phase of a case: see for example: MN and Others v Belgium [GC], Application No. 3599/18, 5 May 2020 ("MN") at [97].

47. As to the terms "within their jurisdiction", there are a number of Grand Chamber (GC) decisions which provide authoritative guidance: MN at [98]-[126]; Hanan v Germany

[GC], App. No. 4871/16, 16 February 2021, at [132]-[145]; and Ukraine and the Netherlands v Russia [GC] App Nos. 8019/16, 43800/14 and 28525/20, 30 November 2022, at [553]-[575].

48. So far as material for the present case, I can summarise the relevant principles in 5 sub-points as follows:

    (i) A state's jurisdictional competence, from the public international law standpoint, is "primarily territorial": MN at [98]. That means that generally "jurisdiction under Article 1 is limited to a State Party's own territory": MN at [103]. This "territorial notion" of jurisdiction is supported by the travaux préparatoires: MN at [100]. See also, in the domestic courts, Smith v Ministry of Defence [2014] AC 52 (HL) at [17].

    (ii) Acts of states performed, or producing effects, outside their territories can constitute an exercise of jurisdiction within the meaning of Article 1 only in "exceptional circumstances": MN at [101]-[102]. A determination that exceptional circumstances exist, such as to justify a finding by the Court that the State was exercising jurisdiction extraterritorially, thus requires "special justification": Banković v United Kingdom [GC], App. No. 52207/99, 12 December 2001, at [56], and [59]; and Al-Skeini and Others v United Kingdom [GC], App No. 55721/07, 7 July 2011, at [132].

    (iii) The question of whether a state is exercising such jurisdiction so as exceptionally to bring persons within the jurisdiction is to be considered by reference to the specific facts of the case: MN, at [102]. It is to be stressed that the Strasbourg Court has been careful to develop and provide limits to categories of extraterritorial jurisdiction. The key feature linking those categories has been that the Contracting State itself has by its own positive action asserted control over persons or a whole area outside its territory: see eg Banković, at [57], [59], [61] and [63]; Al-Skeini, at [130]-[131]. As was explained in MN at [113], the focus is on "the nature of the link between the applicants and the respondent State and to ascertain whether the latter effectively exercised authority or control over them" (my emphasis).

    (iv) The Strasbourg Court has thus recognised the following exceptional categories of extraterritorial jurisdiction: (i) Effective control over an area (this is a category deriving from "the fact of such control" whether by the State's armed forces or through a subordinate local administration: MN, at [103]); (ii) The exercise of "public powers such as authority and responsibility in respect of the maintenance of security": MN, at [104]; and (iii) a number of situations characterised by control over the person, in which there is state agent authority and control being exercised such as by use of force. Similarly, there may be extraterritorial jurisdiction where an individual is taken into the custody of state agents abroad.

    (v) Finally, there is a special category in which a state's jurisdiction "may arise from the actions or omissions of its diplomatic or consular officials when, in their official capacity, they exercise abroad their authority in respect of that State's nationals or their property": MN at [106].

49. It is significant that in the recent decision in Agostinho v Portugal and others [GC], App No. 39371/20, 9 April 2024 ("Agostinho"), the Strasbourg Court declined to expand the grounds on which a state could be held to have extraterritorial jurisdiction over a person. The Grand Chamber underlined that "…jurisdiction cannot be established merely on the basis of the argument that the State is capable of taking a decision or action impacting the applicant's situation abroad": [199]. I note that the Grand Chamber expressly rejected a test of extraterritoriality based on whether a state had control over an applicant's Convention interests, because Article 1 ECHR "requires control over the person himself or herself rather than the person's interests as such": [205].

50. This is consistent with a line of Strasbourg jurisprudence in the immigration context, where the Court has held that administrative decisions taken by the authorities of a Convention State within their territories in respect of (or with an impact upon) persons located abroad is not sufficient to bring those persons within the State's territorial jurisdiction for the purposes of Article 1 ECHR. Thus in MN, which concerned a Syrian family who applied for and were refused visas to enable them to enter Belgium in order to make asylum claims, the Court held at [125] that the Belgian Government had not exercised jurisdiction for Article 1 ECHR purposes over the applicants, notwithstanding that the decision to refuse their applications had a significant impact on their personal situation (involving Articles 2 and 3 ECHR).

DANA's Article 1 ECHR case

51. Mr Birdling did not seek to argue that any of the existing exceptional categories of extraterritorial jurisdiction I have identified above apply. In his attractively presented and forceful submissions, Mr Birdling sought to bring the designation of DANA within Article 1 ECHR on two bases:

    (i) First, by relying on two decisions of the Strasbourg Court in the sanctions context (which I will call, "*the Swiss Cases*") in support of a submission on the following lines, effectively creating a new exception: where a contracting party to the Convention implements sanctions, those sanctions are an exercise of its Article 1 ECHR "jurisdiction" even if the designated person or entity is physically located outside that country and has no assets within it; and

    (ii) Second, by arguing that A1P1 protects DANA's "*goodwill"* within the UK (as well as abroad), such that its designation constitutes an exercise of territorial jurisdiction within the scope of Article 1 ECHR, under conventional principles. In addition, Mr Birdling argues that the designation deprives DANA in the UK of the ability to conduct business now and in the future, including by paying legal representatives.

The Swiss Cases: a new exception for sanctions cases?

52. In Nada v Switzerland, App no. 10594/08, 12 September 2012 ("Nada"), the applicant was resident in an Italian enclave of about 1.6sqkm surrounded by the Swiss Canton of Ticino and separated from the rest of Italy by Lake Lugano. The Swiss Government, acting pursuant to a UN Security Council resolution, subjected the applicant to an entry and transit ban which prevented him from entering Switzerland and thus from leaving

that very confined area for at least six years. The applicant claimed a breach of his Article 5, 8 and 13 ECHR rights by the Swiss Government. The Swiss Government contended that because the impugned measures had been based on Security Council resolutions, the decision to impose those measures should be attributed to the United Nations rather than Switzerland, such that its implementation of those measures did not fall within Article 1. The Court rejected that submission, finding that the measures were implemented by Switzerland. No point was taken by the Swiss Government as to whether its decision to impose the travel ban amounted to the exercise of territorial jurisdiction over the applicant (on the facts he was not physically in Switzerland but in an Italian enclave in the restricted geography I have described). But as argued by Mr Pobjoy in his well-structured submissions, the case stands for a proposition about attribution for the purposes of Article 1 in the context of administrative decisions taken pursuant to UN Security Council resolutions. It does not stand for any wider proposition as to the extraterritorial exercise of jurisdiction. It would be a surprising conclusion that this case, where the extraterritoriality issue was not argued, had sub-silentio created a new exception. Had it sought to do so, I would not have followed it and would have applied the principles drawn from the Grand Chamber decisions.

53. In Al-Dulimi and Montana Management Inc v Switzerland, App No. 5809/08, 21 June 2016, the Swiss Federal Government confiscated the assets of the applicant located in Switzerland, pursuant to a UN Security Council Resolution. The applicant complained of a breach of Article 6 ECHR by reason of the confiscation without any procedural safeguards. It was argued by the Respondent that those acts ought to be attributed to the United Nations rather than Switzerland, seeking to distinguish Nada: [85]-[86]. The Court rejected that submission, citing Nada for the proposition that Switzerland's implementation of the Resolution was properly attributable to it: [93]-[96]. Al-Dulimi accordingly takes matters no further. In any event, I note that the case is materially distinguishable from the present context, since it concerned the seizure of property held within the territory of the defendant state. That has not happened in this case, since as a matter of common ground DANA holds no assets within the UK.

54. As I see it, the substance of DANA's complaint is that the Secretary of State has taken a decision in the UK which is capable of affecting its interests abroad, perhaps only in a reputational sense. In my judgment, Article 1 ECHR cannot be established on the sole basis that a state takes a decision capable of affecting a person situated abroad, or because that decision affected one or more of that person's interests abroad. Recent Grand Chamber decisions of high authority in the form of MN and Agostinho preclude this reasoning as a basis for jurisdiction. To decide the contrary would amount to an unprincipled mass extension of the scope of the ECHR. I would add that there is nothing special or unique about sanctions to justify creation of a new exception. Cases such as MN show that the Court is not willing to extend jurisdiction to benefit those who are at risk of suffering serious violations of Article 2 and 3 ECHR rights.

55. I turn then to consider the second basis for jurisdiction (the UK goodwill argument) advanced by Mr Birdling.

AIP1 ECHR: goodwill in the UK?

56. DANA concedes that it does not have any property or assets within the jurisdiction. Mr Birdling submitted however that A1P1 protects a number of claimed possessions

including DANA's "*goodwill"* as I describe below. Before I address this case, I need to explain how it developed over time.

The iterative development of the A1P1 ECHR claim

57. A1P1 ECHR provides as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of the State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure payment of taxes or other contributions or penalties".

58. The governing concept is enjoyment of "possessions". However, DANA's A1P1 ECHR complaint made a late appearance in this claim. In the Claim Form and Grounds there was no complaint that any possession had been interfered with by the continued designation. The complaint was rather of "hardships" caused by the designation. The Secretary of State in his response pleading argued that there was no jurisdiction for Article 1 ECHR purposes. However, he further pleaded at [56] that in a proportionality challenge the Court must assess the balance struck between the impact on DANA of its designation against the achievement of the objectives of the 2019 Regulations. The Secretary of State explained that while he recognised that designation may, in principle, have a severe impact on individuals affected by the resulting asset freeze, in this case DANA did not appear to have any assets or property located within the UK on which the asset freeze would bite. It was noted that none of the evidence submitted by DANA in support of the claim or in support of its request for a Ministerial review identified any such assets. The Secretary of State explained that the only material impact of the designation identified by DANA was the difficulty faced by its legal advisors in obtaining a licence from OFSI for payment of their legal fees; and the payment of those fees is licensable. Accordingly, the Secretary of State said that the only matters to be weighed against the important foreign policy objectives pursued by the 2019 Regulations are the potential effects the asset freeze would have on DANA if it had assets within the jurisdiction (which it does not) and the inconvenience that its legal advisors face in obtaining a licence for payment. His case was neither of those matters outweighed the public interest in achieving the objectives of the 2019 Regulations.

59. No doubt to confront the challenges posed to its case by the case law on Article 1 ECHR, by the time it came to serve skeletons, DANA's representatives pleaded a creative case, for the first time, as to how A1P1 ECHR was engaged. So, it was said that while it was correct that DANA does not currently have any property or assets within the UK, its designation and the proposed asset freeze interfere with its rights under A1P1 since they "…deprive the Claimant of the ability to conduct business in the UK now and in the future (including instructing and making payment to its legal representatives in the UK) and also deprive the Claimant of the goodwill of the Claimant's business both in the UK and abroad".

60. However, at the hearing, Mr Birdling appeared to me to have reformulated the nature of the A1P1 ECHR possession in issue in what he accepted were slightly different terms. As I put it to him, his case as advanced orally seemed to be that the complaint was of a bundle of "adverse consequences" for DANA's business including damage to its reputation (equivalent he said to Article 8 ECHR for a natural person) caused by the designation. He accepted this summary, and submitted that this was all part of "goodwill". I remained unclear as to the precise nature of the right and he kindly agreed to send me a short statement in writing of how his case was finally being put.

61. That note was provided after the hearing and helpfully explained the "right" for A1P1 ECHR purposes relied on by DANA as follows:

> "The relevant A1P1 interest is the goodwill in the Claimant's business. "Goodwill" does not mean the Claimant's capacity to earn profits in the future (whether in the United Kingdom, Belarus or otherwise), but rather "[i]t is the benefit and advantage of the good name, reputation, and connection of a business. It is the attractive force which brings in custom. It is the one thing which distinguishes an old-established business from a new business at its first start. The goodwill of a business must emanate from a particular centre or source. However widely extended or diffused its influence may be, goodwill is worth nothing unless it has power of attraction sufficient to bring customers home to the source from which it emanates. Goodwill is composed of a variety of elements. It differs in its composition in different trades and in different businesses in the same trade … The goodwill of a business is one whole, and in a case like this it must be dealt with as such.": Breyer at [43]-[45]. It is well-settled as a matter of both domestic and Strasbourg law that the goodwill of a business (understood in this sense) is a possession protected by A1P1". (Emphasis as in original).

62. This appears to be no more than an assertion that DANA had "goodwill" without more. I reject the A1P1 ECHR argument in its various iterations including this final form. It is well-established that A1P1 applies only to a person's existing possessions, with the consequence that "future income cannot be considered to constitute 'possessions' unless it has already been earned or is definitely payable": Anheuser-Busch Inc v Portugal, App no 73049/01, 11 January 2007 at [64]. The concept of "goodwill" is limited to the marketable and presently capitalisable product of a business's past work and reputation, as opposed to mere expectations of future profits: Ian Edgar (Liverpool Ltd) v UK, App no 37683/97, 14 April 1999; Malik v UK, App no. 23780/08, 24 September 2012 at [93]; and Breyer (cited above) at [43]-[49]. However, on the evidence before me, DANA has no such goodwill within the jurisdiction: it does not claim to carry on any business in the UK, still less to have established a reputation and corresponding commercial relationships sufficient to constitute marketable and capitalisable goodwill within this jurisdiction. At its highest DANA can say the designation interferes with the ability to start some future business with a potential to earn income (which Mr Birdling accepted was not a protected right). The fact that DANA's designation may have some impact upon its goodwill in Belarus is not sufficient to establish extraterritorial jurisdiction, because as I have noted above, Article 1 ECHR "requires control over the person himself or herself rather than the person's interests as such": Agostinho at [205].

63. I consider that the substance of DANA's complaint is a pure reputational concern which, absent being tied to an existing business in the UK as part of recognised goodwill established by evidence, is not a recognised possession. As explained by Moses LJ in R (Malik) v Waltham Forest Primary Care Trust [2007] 1 WLR 2092 (CA) at [86], the ability to earn future income is not a possession within A1P1 and it follows that if the element of "goodwill" which has been allegedly damaged is reputation, that element is not to be identified as a possession (I note in passing that this was the Dr Malik who in due course unsuccessfully took his case to Strasbourg: see the citation at [62] above). Mr Birdling's reference to Article 8 ECHR rights to reputation as a form of analogy in argument was telling. In reality, DANA seeks to invoke a personal reputational right as a corporate entity, which the ECHR does not recognise. In summary, like Convention law, English law does not recognise reputation which exists without any supporting local business as property which the law protects.

64. Although presented in a way which has a superficial attraction, DANA's UK goodwill-based case is a vehicle based on assertion (and not evidence). It has plainly been constructed to overcome the obstacles created by the established case law on jurisdictional scope of the ECHR.

65. In my judgment, the sole basis on which DANA can seek to establish jurisdiction is its contention that all sanction designation decisions represent an exercise of extraterritorial sovereign authority falling within the scope of Article 1 ECHR, irrespective of the existence or otherwise of any "possessions" within the jurisdiction. I have rejected that submission as unprincipled and inconsistent with high authority. It follows that Ground 1 fails on the threshold Article 1 ECHR jurisdictional ground.

66. I have not overlooked the claim made by DANA but pursued only rather faintly in oral submissions that there was some form of violation of A1P1 ECHR rights because of the difficulty faced by its legal advisors in obtaining a licence from OFSI for payment of their legal fees, as described in Ms Davies' evidence. The payment of those fees is licensable. I have reservations as to whether this need to licence use of money to challenge sanctions could amount to interference within the UK with a "possession", as appears below. A restriction on sending money outside the UK into the UK does not appear to me to be an interference with, or control of use, of a possession within the jurisdiction for Article 1 ECHR purposes. I will however address whether on the proportionality test such a claimed interference (together with interference with other claimed rights invoked by DANA) is lawful.

Common law rights?

67. DANA relied in the alternative on its "*cognate common law rights"* to do business in written submissions but did not develop this point orally. DANA did not particularise the "*common law rights"* on which it relies, nor identified any (private or public) cause of action to which the alleged interference with those rights gives rise, still less explained the purported extraterritorial effects of such rights. However, to the extent that DANA relies on the common law without asserting any private cause of action, it can do no more than advance an orthodox rationality challenge, since it is well-established that the common law does not (yet) give rise to any entitlement of proportionality review: R (Keyu) v SSFCA [2016] AC 1355 at [131]. There is no

common law right to "do business" in the UK as was at points pleaded by DANA. The way in which the common law traditionally protects freedoms in this context is to require a public authority whose acts have had an adverse impact on a business to: (1) require legal authority for the decision; and (2) then to allow a complainant to show there was either procedural unfairness or irrationality in the decision. Absent engagement of ECHR rights (or formerly EU law rights) proportionality plays no role.

Proportionality

68. Although I have found that the ECHR does not apply, both parties have addressed the Bank Mellat test in some detail, and I am invited to apply it. As I said during oral arguments I find this a rather artificial exercise. That is for the reason that at its most basic level proportionality requires balancing achievement of a state aim against the interference which pursuit of that aim will cause to the enjoyment of a Convention right. The Bank Mellat test creates a structured approach which the court must adopt in deciding whether the state has met an exacting standard. The fourth limb of that test expressly requires a "fair balance" to have been shown. But if there is no legally cognizable ECHR "right" in issue, it makes the exercise rather artificial - what is going into the balance in favour of DANA?

69. Further, there are obvious situations where some ECHR rights (that have been interfered with) will have greater weight in a proportionality balance than others. But in this case, there is no right at all interfered with. That being said, I will proceed on the artificial basis that there is some form of interference with a protected right. The right or rights of DANA going into the balance will be taken by me to include the high-point of Mr Birdling's case as to his client's possessions (see the revised alleged "goodwill" case at [61] above), including the need to obtain licences to pay legal fees. I will proceed below on the basis this bundle of "rights" has been interfered with (for A1P1 ECHR purposes) by the designation. And on the basis that what must be justified by the Secretary of State is the impact of the UK Designation on the Claimant's bundle of "rights" in this sense.

70. As to proportionality, a number of cases were referred to by Counsel. I will rely mainly on the principles drawn from earlier cases as summarised by Singh LJ in Dalston Projects Ltd v Secretary of State for Transport [2024] EWCA Civ 172 *(*"Dalston"). Sir Geoffrey Vos MR and Whipple LJ agreed with Singh LJ's judgment. This was a judgment on the joined appeals from the first instance decisions in Dalston Projects Ltd v Secretary of State for Transport [2023] EWHC 1885 (Admin) (Sir Ross Cranston), and Shvidler v SSFCA [2023] EWHC 212 (Admin) (Garnham J). Both of the appellants have pursued appeals to the Supreme Court and I was informed by Counsel that the oral hearings have been completed and judgment is awaited. I was also referred to the more recent decision of the Court of Appeal in Anzhelika Khan v SSFCDO [2025] EWCA Civ 41 ("Khan") which is an application by Singh LJ of the principles he identified in Dalston. Counsel, some of whom are involved in the Supreme Court appeal, informed me that nothing in the appeal seeks to question the application of the Bank Mellat test.

71. I will begin with some preliminary observations. I approach this challenge by accepting three core points made on behalf of the Secretary of State by Mr Pobjoy. First, no challenge is made by DANA to his conclusion that there are reasonable grounds to suspect that it is an "involved person" within the meaning of regulation 6 of the 2019 Regulations (at least as regards the Minsk World Matter). That is relevant to any

assessment of the public interest in DANA's designation and the balance to be struck between the interference with its rights and the legitimate aims pursued by the designation. Second, DANA has not challenged the lawfulness of the 2019 Regulations themselves. I must proceed on the basis that DANA accepts: (i) that it is an "involved person" for the purposes of the 2019 Regulations, and (ii) that the designation criteria contained in the regulations are themselves lawful and proportionate.

72. It follows that the starting point for any proportionality assessment must be that DANA falls within the class of persons in respect of whom Parliament has lawfully determined that there is (or may be) a legitimate public interest in their designation for the purposes of encouraging the Government of Belarus to respect democratic principles and human rights, and to cease the repression of civil society. Although that is not the end of the inquiry where human rights considerations are engaged, it is a factor which must be accorded some weight in my overall assessment of proportionality.

73. The third matter is that, whilst I must make my own assessment of whether DANA's designation is proportionate, the Court cannot overlook the fact the Secretary of State's assessment of proportionality rests in this case (in certain respects) on matters of executive judgement relating to foreign policy. In matters relating to foreign policy or the conduct of foreign relations, the Court will accord to the Executive "an especially broad margin of discretion": R (Al Rawi) v Secretary of State for Foreign and Commonwealth Affairs [2008] QB 289 at [148]. This will be particularly so where a decision involves a "judgment or prediction … whose rationality can be assessed but whose correctness cannot in the nature of things be tested empirically": R (Lord Carlile) v Home Secretary [2015] AC 945 at [32]. I would include within this matters such as the predictive effects of a measure taken against designated third parties through what might be called "signalling". While the Court must itself be the master of the proportionality exercise, it must be sensitive to the expertise of the Secretary of State and his advisers in for example assessing the efficacy of a particular measure.

74. DANA's primary case concerns the rational connection limb (the 2nd limb of the four Bank Mellat questions I set below). I have already underlined that the Court must determine for itself whether there is a rational connection, but as explained by Singh LJ in Dalston, what is required under the second limb is a rational connection, "no more and no less". In particular there does not have to be a perfect fit between the legitimate aim and the means chosen to achieve it, provided there is a rational connection between them. Further, where the Secretary of State relies on a number of factors as showing that there is a rational connection between the measure under challenge and its objectives (as in this claim), he is not required to show that each of them is alone a sufficient reason for adopting the measure. As a matter of commonsense, certain of those factors may be weaker than others. What is crucial at the end of the day is whether there is a rational connection between the legitimate aim and the means chosen to achieve it. In my overall assessment of proportionality, I must take into account the evidence as at the date of the hearing.

75. Where the decision-maker relies on a rational connection between a foreign policy objective and the cumulative effect of a number of sanctions measures imposed for the same purpose, it is not necessary for the decision-maker to demonstrate the efficacy of each individual designation as a means of achieving of that objective: Dalston Projects Ltd v Secretary of State for Transport [2023] EWHC 1885 (Admin) at [86]. This is because such an approach would make it impossible to justify particular sanctions

measures even if, in aggregate, the measures were plainly rationally connected with the objectives: see further Dalston at [114]-[117] in the Court of Appeal.

76. The fact that sanctions may be open-ended and have a severe impact does not render their imposition disproportionate. In Dalston, Singh LJ accepted the submission that, on the facts of that appeal, an asset freeze imposed under the Russia (Sanctions) (EU Exit) Regulations 2019 was "severe and open-ended", but nonetheless held that the application of the sanctions was proportionate: at [210]. Sanctions often have to be severe and open-ended if they are to be effective.

77. Four broad matters arise for decision (the four limbs under Bank Mellat). So, I have to determine: (1) whether the objective of the measure is sufficiently important to justify the limitation of a protected right (*legitimate objective*), (2) whether the measure is rationally connected to the objective (*rational connection)*, (3) whether a less intrusive measure could have been used without unacceptably compromising the achievement of the objective (*less intrusive measure*), and (4) whether, balancing the severity of the measure's effects on the rights of the persons to whom it applies against the importance of the objective, to the extent that the measure will contribute to its achievement, the former outweighs the latter (*fair balance*). I will now address each of the four limbs.

(1) Legitimate objective

78. Ms Lester KC and Mr Birdling fairly and properly concede in their skeleton argument on behalf of DANA that the objectives pursued by the 2019 Regulations are "*no doubt*" sufficiently important to justify the limitation of a fundamental right. The Belarusian sanctions regime has been designed to secure foreign policy objectives of profound importance. The 2019 Regulations were enacted in response to the involvement of Belarusian officials in violations of international human rights law; and subsequently extended in scope and duration in response to the flawed Presidential elections in Belarus in August 2020, and the serious human rights abuses that followed (including the mass detention of critics and opposition figures, and a crackdown on anti-government protest by the Belarusian security forces). The 2019 Regulations were expanded in 2022 in response to Belarus's involvement in Russia aggression against Ukraine.

(2) Rational connection

79. The basis upon which the Secretary of State concluded that DANA's designation is rationally connected to its legitimate objectives is set out in Mr Darling's first witness statement. Ms Lester KC subjected each of these factors to sustained and powerful attack. However, in my judgment, these are classic predictive and evaluative judgements as to the foreign policy "levers" by which our government can influence the behaviour of the Government of Belarus; and assessments as to how to alter the conduct of current and potential future third party actors including corporate interests that support or may in future seek to support the Lukashenko regime. These are matters in respect of which the Secretary of State's assessment is entitled to considerable weight. I am satisfied a rational connection has been established. I will address Ms Lester KC's principal points in turn.

80. Ms Lester KC argued that DANA has not benefited from or supported the Government of Belarus. I reject that submission. DANA has not challenged the Secretary of State's determination that it is an "*involved person*" by virtue of having obtained a benefit from or supported the Government of Belarus through carrying on business in a sector of strategic significance to the Government of Belarus (the Minsk World Matter). It is

not open to DANA, in those circumstances, to challenge the Secretary of State's rational connection analysis on the basis that it has not in fact obtained such a benefit.

81. Ms Lester KC argued that it cannot be assumed from her client's sponsorship of the BNOC that it has enabled or facilitated the repression of civil society in Belarus. I have found DANA was rationally found by the Secretary of State to be an "involved person" on this additional basis. It is not open to DANA to challenge the Secretary of State's proportionality analysis on the contrary factual premise.

82. Ms Lester KC argued that the designation of a person allegedly considered "hostile" to the Belarusian Government cannot be rationally connected to the objectives of the 2019 Regulations. This point was the main focus of oral submissions and developed in some detail. I reject the submission for the following reasons:

    (1) In my judgment, the factual premise of the argument is flawed. Although I have found above that DANA is suffering negatively at the hands of the regime, DANA does not appear to have been singled out by Belarus for such treatment on the basis of its conduct or attitude towards the Belarusian regime. Rather, in common with approximately 2000 other Belarusian companies, DANA and its shareholders are subject to certain legislative and administrative restrictions. DANA is subject to those restrictions because its shareholders are registered in a state considered unfriendly to Belarus (Cyprus), not because DANA itself is regarded as "unfriendly" (the term used in the evidence). I note that this is supported by the legal opinion of SBH Law Office (Belarus lawyers retained by DANA) in the supplemental bundle. DANA's liability to the application of those measures does not appear to be a result of Belarus considering DANA to have committed any unfriendly actions towards the Belarusian regime. The measures appear instead to be aimed at preventing capital flight from Belarus.

    (2) However, even if it were correct that DANA had been singled out for negative treatment by the Belarusian Government and suffered detriment as a consequence, the designation would nevertheless be rationally connected with its objectives. In my judgment, the fact that DANA is liable to the imposition of certain restrictions by operation of Belarusian law does not negate the rational connection between the UK designation and its deterrent and signalling functions, or the rationality of the Secretary of State's assessment that those matters may contribute to the achievement of the objectives of the 2019 Regulations. Even if DANA had been singled out in the manner alleged, it remains the case that DANA is an "involved person" within the meaning of the 2019 Regulations by virtue of its past sponsorship of the BNOC and its (ongoing) high-profile business in the Belarusian construction sector. Its designation by the Secretary of State would therefore still be capable of incentivising the kind of behaviour change which is intended to contribute to the purposes of the 2019 Regulations (whether by DANA itself or similarly-situated third parties).

    (3) The fact that the Belarusian regime has deemed it necessary to impose retaliatory and protective measures in response to Western (including UK) sanctions indicates that those sanctions may well be having their intended effect of imposing significant pressure on the regime. The fact of the Belarusian authorities having taken such measures in an effort to limit or undermine the effectiveness of Western sanctions cannot have the effect of depriving those sanctions of their rational connection to the objectives of the 2019 Regulations. Mr Pobjoy was right to

submit that to conclude otherwise would be to provide regimes such as Belarus with an effective 'get out of jail free' card in relation to financial sanctions, since all such sanctions would be deemed unlawful in the event that the regime concerned were to impose retaliatory restrictive measures in respect of the same entities (whether to prevent capital flight or otherwise).

83. Ms Lester KC further argued that that the Secretary of State's reliance on the "signalling" and incentive effects is incapable of establishing a rational connection, both for reasons of principle and for reasons specific to DANA's particular position. I will address each in turn:

    (1) As regards the complaints of principle, in my judgment it is obvious that the effectiveness of sanctions measures depends in large part on the signalling and incentive effects which they create in relation to the designated person and similarly situated third parties, and the changes in behaviour that such effects are intended to bring about. To suggest that such effects are not rationally connected to their intended objectives amounts to the submission that sanctions *per se* are an irrational foreign policy tool. I do not accept that.

    (2) As regards the application of these signalling effects in the context of DANA, it is not in dispute that DANA occupies a prominent position in the Belarusian construction sector and remains responsible for the delivery of a high-profile project, the importance of which has been emphasised by President Lukashenko himself. In my judgment, it follows in those circumstances that its designation is rationally capable of disincentivising DANA (and similarly situated businesses) from carrying on business in sectors of strategic significance to the regime. Even if DANA is unable to change its behaviour, the wider signalling effect on third parties remains an important basis for the designation.

84. The rational connection requirement is amply satisfied.

(3) Less intrusive measures

85. The evidence is that less intrusive measures have been considered by the Secretary of State, including expressions of concern through diplomatic and public channels and multilateral fora. Having considered the efficacy of alternative foreign policy measures, the Secretary of State concluded that these would send a weaker signal of condemnation and would not achieve the intended deterrent effects of the designation in relation to both DANA itself and on other entities in a similar position. This requirement is satisfied.

(4) Fair balance

86. DANA does not have any assets or property located within the UK on which the asset freeze under the 2019 Regulations bites. Aside from the bundle of claimed rights relied upon by Mr Birdling, the only material impact of the designation identified by DANA is the difficulty faced by its legal advisors in obtaining a licence from OFSI for payment of their legal fees (I refer here to Ms Davies' evidence). The payment of those fees is licensable. So, the matters to be weighed against the important foreign policy objectives pursued by the 2019 Regulations are the potential effects of the designation on the bundle of claimed rights and the inconvenience that its legal advisors face in obtaining a licence for payment. In my judgment, none of those matters outweighs the

public interest in achieving the objectives of the 2019 Regulations. I would add that it is hard to see how the fee regime is of relevance in the proportionality assessment at all: see Dalston at [212] where Singh LJ explained that complaints about the way in which the licensing system is operated can be remedied by action available against HM Treasury, but that would not be a reason to question the lawfulness of a designation. See also Singh LJ's further observations to the same effect in Khan at [137]-[138].

87. Finally, as to Ms Lester KC's reliance on the impact of DANA's liability to the imposition of restrictive measures in Belarus, that is not relevant. The relevant question for me is whether the burdens imposed by the UK designation are outweighed by the public interest in achieving the objectives of the 2019 Regulations. The fact that DANA may be liable to the imposition of separate and severe detriments under Belarusian law is irrelevant to that assessment, since it is not suggested that its liability is a consequence of its designation in the UK, or that its de-designation will remove that liability.

Conclusion on proportionality

88. I am satisfied on the evidence that the sanctions were proportionate on an application of Bank Mellat. For the avoidance of doubt, my decision on proportionality, while based on the evidence of the Secretary of State and that of DANA, is my own rather than being the product of a public law rationality review.

Retrospectivity and arbitrariness

89. Although related to proportionality, a number of discrete points were pleaded on behalf of DANA as aspects of the Ground 1 challenge. In short, Ms Lester KC argued that DANA's designation is unlawful because (i) the Secretary of State's powers of designation have been exercised "arbitrarily" and (ii) it amounts to retrospective penalisation, contrary to Article 7 ECHR. I reject these additional points which were briefly developed orally by Ms Lester KC as being without merit, for essentially the reasons given by Mr Fakhoury in his persuasively presented oral arguments. I will deal with the points in turn under 3 headings: arbitrariness, differential treatment and retrospectivity.

Arbitrariness

90. It is significant that DANA does not make an Article 14 ECHR discrimination complaint. Ms Lester KC argues rather that arbitrary and inconsistent application of broad statutory powers renders the application of those powers disproportionate. Reliance was placed on Bank Mellat at [25], citing the well-known Belmarsh case (A v Secretary of State for the Home Department [2005] 2 AC 68). She also argued that the Secretary of State has not disclosed any policy which guided the application of a broad discretion to determine who ought to be designated for the purpose of sanctions under the 2019 Regulations. This was said to be contrary to foundational principles of public law and good administration as well as risking a disproportionate decision. Ms Lester KC also argued that DANA is in a significantly worse position in Belarus than a number of other foreign-owned companies, which continue to operate in significant sectors of the Belarusian economy but have not been subject to designation in the UK. She pointed to CJSC Belarusia Telecommunications Network and A1 Telekom Belarus which she said are prominent Belarusian companies owned by foreign companies (Turkcell and A1 Telekom Austria Group, respectively), but have not been sanctioned by the Belarus regime, and continue to operate.

91. As to the lack of a policy, as Mr Fakhoury correctly submitted, this point goes nowhere because it is not suggested there was any public law obligation to have a policy. A failure to have a policy does not make a decision arbitrary, it is either well-founded or not.

Differential treatment

92. I turn to the alleged difference in treatment. It is rightly not disputed (at the level of principle) on behalf of the Secretary of State that such an evidenced difference may make a decision disproportionate on the grounds that no rational connection has been shown, or because the same objective could be achieved by some other means. However, the key evidential material to make good such a case is missing in the present claim. The Secretary of State considers designations on a case-by-case basis by reference to their particular facts, the objectives of the regime, and individual considerations of proportionality. The reasons for DANA's designation are set out in the Administrative Review Form, Updated SDF and in Mr Darling's evidence as I have summarised above. DANA and others were designated in order to achieve the objectives of the 2019 Regulations. There is nothing arbitrary about that. DANA's reliance on purported comparators is misplaced: this case could not be further from the comparators in Bank Mellat and A. The extent to which particular entities carry on business that is strategically significant to the Government of Belarus, such that their designation might be appropriate in furtherance of the objectives of the 2019 Regulations, is a matter of executive judgement *par excellence*. I am not in a position to assess on the evidence for myself the nature and extent of various other companies' involvement in sectors of strategic significance to the Government of Belarus, so as to conclude that such entities are sufficiently similarly situated to DANA to render its designation arbitrarily discriminatory. Indeed, DANA's representatives made no attempt to draw out the role and involvement of the two entities referred to in Ms Lester KC's submissions (Turkcell and A1 Telekom Austria Group) to show they were direct comparators.

Retrospectivity

93. The aim of the sanctions process is not punishment within Article 7 ECHR. The aim is to pursue foreign policy objectives with the purpose of incentivising future changes in behaviour in particular regimes. Further, retrospectivity is in my judgment *hard wired* into the regime by the primary and secondary legislation (the legality of which is not challenged). So, the legislation expressly looks to past conduct. Sanctions must look to past actions because such actions provide a sound evidential basis for deciding who should be sanctioned. The fact that a person may be designated for involvement in specified activities which were not previously targeted by the sanctions regime is a necessary corollary of the statutory scheme. It was not disputed that it is inherent in the legislative framework created by section 11 of SAMLA that a designation can be based on historic involvement in activities which, at the time they were carried out, were not targeted by the sanctions regime in question. Once that is accepted, the retrospectivity complaint has no merit.

VII. Ground 2: rationality – submissions

94. Ms Lester KC's pleaded case was that the Secretary of State could not, on the basis of the material before him at the time of the review decision, rationally have determined

that the matters which led to the Secretary of State concluding that the Claimant fell within the definition of an "involved person" disclosed sufficient grounds to justify maintaining its designation (Grounds of Review at [58]). As I have explained above, the position was modified at the hearing to make clear that as regards the Olympic Matter it was not accepted that DANA was an "involved person". I have rejected the rationality challenge to that decision. What remains is a rationality challenge to the exercise of the discretion to maintain the designation on the basis that DANA is an "involved person" (on the basis of either or both of the Olympic Matter and Minsk World Matter). DANA relied on the same points in support of this remaining ground as those made in relation to Ground 1. Mr Fakhoury argued in response that the separate rationality challenge adds nothing to the complaint about a lack of rational connection between the aims of the 2019 Regulations and DANA's designation as a means of pursuing those aims.

VIII. Ground 2: rationality - analysis

95. This ground is parasitic on the arguments made in relation to the rational connection aspect of the proportionality analysis and is without merit (*a fortiori* given the lower standards of review). An irrational decision is a decision which is not logically explained by reasons. Rational reasons were given for the designation. It is hard to see how a decision which the court itself has found to be proportionate (applying a more exacting test) could be irrational under conventional public law principles. Ground 2 is dismissed.

IX. Conclusion

96. I dismiss DANA's claim.

X. The Redaction Application

97. On 5 July 2024, the Secretary of State applied under CPR 79.24 for permission to redact the names of certain civil servants in his disclosure. This application was made on the basis that the disclosure of those names would be contrary to the public interest. The application is supported by the second witness statement of Mr Darling and is not opposed by DANA. At the hearing of the substantive claim, I allowed the application. I did not require CLOSED material or arguments in support of the application. These are my reasons.

98. Disclosure in this claim is governed by the self-contained regime established by CPR 79.23. In R (IAB) v SSHD [2024] 1 WLR 1916, the Court of Appeal considered whether a defendant in judicial review proceedings was entitled routinely to redact disclosed documents so as to remove the names of civil servants (including junior civil servants). The Court held at [36] that a defendant was not permitted to apply such redactions as a matter of routine. Instead, "*good and specific reasons*" would be required for redactions, for example where the redaction of names was justified for

reasons of national security or where there was evidence of a real risk to the personal safety of the individual concerned. As explained in the evidence before me, the names of Mr Darling and 12 other civil servants have not been redacted on the basis that these individuals are likely to be sufficiently identifiable and associated in the public domain with sanctions designation work. The balance of the redactions (to the names of 49 officials) have been applied because of the risks posed, including to the UK's national security, if the names of relevant officials in these documents were disclosed and referred to in open court.

99. I accept that these redactions were not applied as a matter of routine but to address specific concerns arising in relation to the Belarus sanctions regime. The nature of (and evidential basis for) those concerns is set out by Mr Darling. I accept that evidence. As I said at the hearing, I did not require CLOSED evidence to understand these concerns (the FCDO had offered, if necessary to provide such evidence).

100. I will summarise the position and my reasons for acceding to the application in OPEN. In short, the Government of Belarus poses a threat to UK national security, both directly and through its close relationship with Russia. The Belarusian security and intelligence apparatus has close operational and other links with its Russian counterpart, and has adopted a military doctrine which identifies the "*Anglo-Saxon alliance*" (understood as a reference to the US and UK) as Belarus's main external security threat. Against that background, four particular threats arise in relation to the disclosure of the names of officials working on the UK sanctions regime: (i) threats of hostile cyber activity (as to which a Belarusian cyber-espionage group with suspected links to Russian counterparts was identified in August 2023 with a focus on targeting foreign embassies and compromising the devices of embassy staff from a number of countries); (ii) threats of espionage (in circumstances where UK sanctions decisions, which represent a key pillar of UK foreign and security policy, are likely to be of interest to hostile foreign powers including Belarus and Russia); (iii) threats of retaliatory measures (which would be consistent with threats issued by President Lukashenko and the Belarusian Foreign Ministry, against the backdrop of suggestions by Dmitry Medvedev (Deputy Chairman of the Russian Security Council) that civil servants are considered legitimate targets for such retaliation, and evidence of a number of security incidents involving FCDO officials apparently relating to their work on Russia-related matters); and (iv) threats of reciprocal sanctions.

101. In my judgment, this evidence amply satisfies the requirement to show "*good and specific reasons*" of the type and nature contemplated by IAB. To be balanced against the risks to national security posed (in the particular context of this case) by disclosure of the names of civil servants is the peripheral relevance of those names to the issues in dispute. The identities of relevant officials are not themselves relevant to the pleaded issues. At best, they provide some context to the decision-making process and improve the overall comprehensibility of the disclosed documents. That marginal benefit is outweighed by the serious and concrete risks identified in the evidence.